

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE ANNUITY, PENSION, WELFARE,	:	
TRAINING AND LABOR MANAGEMENT	:	
COOPERATION TRUST FUNDS OF THE	:	ORDER ADOPTING REPORT
INTERNATIONAL UNION OF OPERATING	:	AND RECOMMENDATION
ENGINEERS LOCAL 14-14B, AFL-CIO, et al.,	:	
Plaintiffs,	:	23-CV-5434 (AMD) (JAM)
	:	
– against –	:	
	:	
C.M. ASHLAND CONSTRUCTION,		
Defendant.		

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ANN M. DONNELLY, United States District Judge:

The plaintiffs—a labor union representing construction industry employees throughout New York City, and the union’s joint trustee funds that provide benefits to eligible employees, retirees, and their dependents—commenced this action on July 18, 2023 against the defendant, a New Jersey-based construction company formed under New York law. (ECF No. 2.) The union holds a collective bargaining agreement in which the defendant agreed, as relevant here, to make certain contributions and payments to the union’s joint trustee funds based on the number of hours worked by each employee, and to produce its books and records for inspection upon an audit demand by the trustees of the union’s funds. (*Id.* ¶¶ 24, 25.) The plaintiffs allege that the defendant has underreported the number of employees, hours worked, and wages paid, and has underpaid contributions owed to the union’s funds. (*Id.* ¶ 26.) The plaintiffs also allege that the defendant did not respond to an audit demand. (*Id.* ¶ 27.) The plaintiffs seek (1) an order compelling the defendant to submit to an audit of its books and records; and (2) recovery of

delinquent contributions and payments as identified through the audit, as well as accumulated interest, liquidated damages, audit costs, and attorneys' fees and costs. (*Id.* ¶ 1.)

The defendant did not answer or otherwise appear. The Clerk of Court entered a default on August 24, 2023. (ECF No. 10.) On August 28, 2023, the plaintiffs filed a motion for default judgment. (ECF No. 12.) On August 30, 2023, the Court referred the motion to then-Magistrate Judge Ramon Reyes, Jr., and upon Judge Reyes's appointment as a District Judge, the matter was re-assigned to Magistrate Judge Joseph Marutollo. (*ECF Orders dated Aug. 30, 2023; Nov. 13, 2023.*) On January 12, 2024, Judge Marutollo issued a comprehensive Report and Recommendation, recommending that the plaintiffs' motion be granted in its entirety. (ECF No. 17.) No objections have been filed to the Report and Recommendation, and the time for doing so has passed.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the report and recommendation to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quotation marks omitted).

I have carefully reviewed Judge Marutollo's thorough and well-reasoned Report and Recommendation and find no error. Accordingly, I adopt the Report and Recommendation in its entirety and order that the plaintiffs' motion for default judgment is granted in its entirety against the defendant. The defendant is ordered to (1) submit to an audit of its books and records, to wit: its tax forms 941s; quarterly payroll tax forms, also known as NYS-45 tax forms; corporate payroll records (including information identifying hours paid and gross wages); cash

disbursements records; tax forms W-2s; payroll reports (provided to the union or fund office, if applicable); and canceled checks; for the time period of July 29, 2020 through June 30, 2023;

(2) pay the plaintiffs \$2,821.00 in attorneys' fees; and (3) pay the plaintiffs \$587.00 in costs.

The Court also orders that, following the audit, the plaintiffs are permitted to seek an amended judgment against the defendant for any delinquent contributions plus interest, liquidated damages, audit costs, and attorneys' fees and costs.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY

United States District Judge

Dated: Brooklyn, New York
January 31, 2024